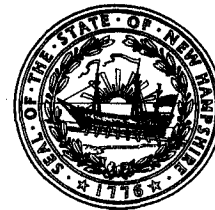




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Frank Defreze
99 Timber Swamp Road
Hampton, NH 03842-1708

Re: Self Certification Requirement

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
No. AF 05-077**

September 15, 2005

I. INTRODUCTION

This Notice of Proposed Administrative Fine is issued by the Department of Environmental Services, Waste Management Division to Frank Defreze, pursuant to RSA 147-A:17-a and Env-C 601.05. The Waste Management Division is proposing that fines totaling \$250 be imposed against Frank Defreze for the violation alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Waste Management Division ("the Division"), is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Frank Defreze, apparently d/b/a as "Frank's Garage," is an individual having a mailing address of 99 Timber Swamp Road, Hampton, NH 03842-1708.

III. VIOLATIONS ALLEGED

1. Frank Defreze has violated RSA 147-A:5, IV by failing to submit to the Department of Environmental Services ("DES") the Small Quantity Generator Self-certification Form and Declaration of Compliance ("SQG Self-certification Form") by January 1, 2004.
2. Frank Defreze has violated RSA 147-A:5, IV by failing to submit to the Department of Environmental Services ("DES") the \$180 fee for the period of 2004 through 2006.

IV. PROPOSED ADMINISTRATIVE FINES

1. For the violations identified in Section III, paragraphs 1 and 2, pursuant to Env-C 610, the Division is proposing a fine of \$250.

The total fine sought is \$250, subject to reduction pursuant to Section V, paragraph 1.

V. Response Options

Frank Defreze is required by NH Admin. Rule Env-C 601.06 to respond to this notice. Please respond using one of the following options:

1. Frank Defreze may submit the \$180 fee and the SQG Self-certification Form together with a reduced fine of \$150 for a **total payment of \$330**. If Frank Defreze chooses this option, the fine payment, the signed waiver of hearing form, SQG Self-certification form, and fee must be submitted to the DES Legal Unit by October 19, 2005. If the administrative fine is not paid by the aforementioned date then the reduced rate no longer applies and the fine being sought is \$250.
2. Frank Defreze may request a meeting, to be held either in person or by telephone, to discuss any errors or misunderstandings in the facts as stated in Section VI. To choose this option, Frank Defreze **must** check the informal meeting request, sign the appearance form, return it to the DES Legal Unit and call Linda Birmingham, Enforcement Manager at (603) 271-5328 all by October 19, 2005.
3. Frank Defreze may request a formal adjudicative hearing to contest the facts stated in Section VI, and the proposed fine. To choose this option, Frank Defreze **must** check the formal hearing request and submit the appearance form to the DES Legal Unit by October 19, 2005. A Notice of Hearing will be issued to inform Frank Defreze of the date and time for the hearing.

VI. SUMMARY OF FACT AND LAW SUPPORTING CLAIM

1. Pursuant to RSA 147-A, DES regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100-1100 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 147-A:17-a, the Commissioner of DES is authorized to impose fines of up to \$2,000 per offense for violations of RSA 147-A or rules adopted pursuant thereto. Pursuant to this section, the Commissioner has adopted Env-C 610 and Env-C 612 to establish fines for such violations.
3. RSA 147-A:5, IV(a) establishes the Small Quantity Generator (SQG) self-certification program, by requiring each hazardous waste generator that generates less than 220 pounds (100 kilograms) of hazardous waste per month to submit to DES, every 3 years, a self-certification declaration stating that the facility is in compliance with the small quantity hazardous waste generator rules. The declaration shall be on a form provided by DES, the SQG Self-certification Form.
4. RSA 147-A:5, IV(c) requires each SQG to pay a non-refundable fee of \$180, unless the SQG is exempt from the fee under RSA 147-A:5, IV(e) because it is a political subdivision of the state.
5. (a) RSA 147-A:5, IV(c)(1) requires each SQG in Rockingham and Strafford counties to submit self-certification forms by January 1, 2004.

(b) RSA 147-A:5, IV(c)(1) and IV(e) require each SQG that is not a political subdivision to submit a fee of \$180 for the period of 2004 through 2006, to DES by January 1, 2004.

6. Frank Defreze operates an auto service and repair facility located in Hampton, New Hampshire, which is in Rockingham County. Frank Defreze registered as a generator of hazardous waste on January 27, 1997. Based on Frank Defreze's Hazardous Waste Facility Notification Form, Frank Defreze generates less than 220 lbs. /month of hazardous waste.

7. Under cover of letter dated October 1, 2003, the Division mailed the SQG Self-certification Form to SQGs in Rockingham and Strafford Counties, including Frank Defreze. The cover letter informed the SQG of the law requiring SQGs of hazardous waste to provide certification that the SQGs facility is in compliance with applicable sections of the New Hampshire Hazardous Waste Rules. The letter provided notice that the SQG Self-certification Form and the \$180 fee were due on or before January 1, 2004.

8. The Division did not receive the SQG Self-certification Form and the accompanying \$180 fee from Frank Defreze by the deadline date of January 1, 2004.

9. By letter dated May 25, 2004, the Division notified Frank Defreze that the Division had not received the required SQG Self-certification Form and the accompanying payment, by the statutory deadline. The letter also informed Frank Defreze that the Division may pursue enforcement options to ensure that all SQGs comply with the statutory requirement. The letter provided notice that Frank Defreze needed to submit the SQG Self-certification Form and pay the required fee on or before July 12, 2004.

10. The Division did not receive the SQG Self-certification Form and the accompanying fee from Frank Defreze on or before July 12, 2004.

11. Frank Defreze was contacted via a telephone campaign, which was conducted by Division personnel from September 2004 through January 2005, to inform delinquent SQGs that the Division had still not received the SQG Self-certification Form and the accompanying payment, by the statutory deadline.

12. On May 30, 2005, Division personnel conducted a site visit to provide Frank Defreze final notice to submit the SQG Self-certification Form and the accompanying fee of \$180. Division personnel informed Frank Defreze that the Division would pursue enforcement options to ensure that all SQGs comply with the statutory requirement.

13. As of the date of this Notice, the Division still has not received the SQG Self-certification Form and the accompanying fee of \$180.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If Frank Defreze has any questions about this matter, please contact Linda Birmingham, at (603) 271-5328 or the DES Legal Unit, at (603) 271-7509.

COPY

Anthony P. Grunta, P.G., Director
Waste Management Division

cc: Michael J. Walls, Assistant Commissioner, DES
Gretchen Hamel, Legal Unit Administrator
Jennifer Patterson, Esq., Senior Assistant Attorney General, NHDOJ-OA
RCRA/DB/AF
PLH/JJD/APG/DJR

***** RETURN THIS PAGE ONLY *****

**FRANK DEFREZE IS REQUIRED BY LAW
TO RESPOND TO THIS NOTICE.**

PLEASE RESPOND NO LATER THAN OCTOBER 19, 2005.

Please check the appropriate line under either A or B and fill in the requested information under C below.

A.) APPEARANCE On behalf of Frank Defreze:

_____ I request to have a **formal hearing** scheduled in this matter.

_____ I request to have an **informal meeting** to discuss errors of fact.

B.) WAIVER OF HEARING On behalf of Frank Defreze:

_____ I certify that I understand my right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive that right. The fine payment in the amount of \$150* (if paid before October 19, 2005) and the SQG Self-certification Form with the \$180 fee, for a total payment of \$330, paid to "Treasurer, State of New Hampshire" is enclosed. *If the administrative fine is not paid by October 19, 2005 the fine payment is raised to \$250 making the total payment due after that date \$430.*

** If payment is made by check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

C.) Pursuant to Env-C 601.06(d), please provide the following information:

Signature _____ Date _____

Name (please print or type): _____

Title: _____

Phone Number: _____

RETURN THIS PAGE ONLY TO:

Department of Environmental Services ~ Legal Unit

Michael Sclafani, Legal Assistant

P.O. Box 95

Concord, NH 03302-0095